

ORIGINAL



0000171280

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN

BOB STUMP

BOB BURNS

TOM FORESE

ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS 2016 RENEWABLE
ENERGY STANDARD IMPLEMENTATION
PLAN.

DOCKET NO. E-01933A-15-0239

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
THE PROPERTIES OF TUCSON ELECTRIC
POWER COMPANY DEVOTED TO ITS
OPERATIONS THROUGHOUT THE STATE OF
ARIZONA AND FOR RELATED APPROVALS.

DOCKET NO. E-01933A-15-0322

RECEIVED
2016 JUN 24 P 4:31
AZ CORP COMMISSION
DOCKET CONTROL

TUCSON ELECTRIC POWER COMPANY'S

REPLY BRIEF

REGARDING 2016 REST IMPLEMENTATION PLAN ISSUES

JUNE 24, 2016

Arizona Corporation Commission

DOCKETED

JUN 24 2016

DOCKETED BY

Handwritten signature

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Reply to EFCA.....	2
A.	The RCS and TORS programs increase competition and do not violate competition principles.....	2
	1. It is appropriate for a regulated utility to own generation assets	2
	2. The programs do not violate any supposed policy of electric competition	2
	3. The programs are designed to meet ACC compliance requirements.....	3
	4. As a matter of law, the programs are not anticompetitive	4
	5. The TORS and RCS programs are procompetitive programs that make economic sense	7
	6. The Commission controls any expansion of these programs.....	8
	7. It is not anticompetitive to exclude renters from the RCS program	9
	8. TEP's access to its own information does not harm EFCA's Members.....	11
B.	TEP's programs will reduce cost shifts, thereby benefitting customers.....	11
C.	The TORS and RCS rates are reasonable	13
D.	The RCS program is community solar.....	14
E.	Third parties will participate in community solar through PPAs	15
F.	TEP reasonably complied with the previous TORS order.....	16
III.	Reply to RUCO.....	16
IV.	Reply to Staff.....	17
V.	Conclusion	18

1 **I. Introduction.**

2 Tucson Electric Power Company (“TEP” or “Company”) responds to the post-hearing
3 briefs of Commission Staff, the Residential Utility Consumer Office (“RUCO”) and the Energy
4 Freedom Coalition of America (“EFCA”).¹ TEP appreciates the constructive role played by Staff
5 and RUCO in this process, and Staff’s support for the Residential Community Solar (“RCS”)
6 program and RUCO’s support for the TEP-Owned Rooftop Solar (“TORS”) program. The RCS
7 and TORS programs will provide additional choices for customers, and will expand the market by
8 making solar available to many customers who either are unable to obtain rooftops solar because
9 they are unable to purchase a system, do not meet the stringent credit requirements of the rooftop
10 solar leasing companies or choose not to enter into solar leases. The RCS program expands the
11 market even further, including customers who cannot choose rooftop solar because their roofs are
12 too small, too shaded, or cannot withstand the weight of the solar systems. As regulated services
13 offered by a regulated utility, the Commission will retain strict control over the size, scope and
14 cost of these programs. These programs will provide additional choices to customers, while
15 reducing the solar “cost shift” and expanding the market. The Commission should approve both
16 programs.

17 While claiming to advocate increased competition, EFCA instead proposes to restrict
18 competition by excluding TEP from participating in the solar DG market. EFCA ignores
19 altogether consumers’ desire for a utility-backed solar DG option and belittles the significantly
20 greater efficiencies and lower costs to consumers offered by TEP’s programs – programs that
21 expand the deployment of solar resources in TEP’s service area. Instead, EFCA contends that
22 TEP should not be permitted to offer the TORS or RCS programs at all, or if they are permitted,
23 that they should be done only through a separate unregulated subsidiary.

24 EFCA cannot get around the fact that TEP has an obligation under Arizona law to meet its
25 customers’ retail electricity needs and to invest in renewable and other generation resources,

26
27 ¹ TEP relies on its Initial Brief for all issues. TEP is only responding to selected arguments in this Reply
Brief, and TEP has not changed or waived any arguments made in its Initial Brief.

1 including solar, as a regulated utility. TEP's proposals here serve the public interest by offering
2 additional solar choices including a new community solar product, reducing cost shifts, providing
3 service more efficiently, and providing cost-effective ways to comply with its obligations under
4 the REST Rules.

5 **II. Reply to EFCA.**

6 **A. The RCS and TORS programs increase competition and do not violate**
7 **competition principles.**

8 **1. *It is appropriate for a regulated utility to own generation assets.***

9 While EFCA complains about competition and vigorously opposes TEP's request to offer
10 its RCS and TORS programs, its positions are not in the public interest. Providing new choices to
11 customers is not anticompetitive. And because EFCA's members benefit greatly from the net
12 metering subsidies their business models rely upon, EFCA's further complaints about TEP's
13 regulated status ring hollow.

14 As EFCA concedes, "[b]ecause TEP is a public service company operating under a
15 Certificate of Convenience and Necessity, questions regarding its activities are not exclusively
16 governed by considerations of competition."² TEP's Initial Brief explained at length why it is
17 appropriate and in the public interest for a vertically integrated utility like TEP to own generation
18 assets, including utility-scale, community, and rooftop solar generation assets.³

19 **2. *The programs do not violate any supposed policy of electric competition.***

20 EFCA points to the supposed "clearly articulated policy" of electric competition in
21 Arizona.⁴ But again it is procompetitive, not anticompetitive, to offer additional choices like RCS
22 and TORS to customers. Thus, approving these programs is not inconsistent with any "policy" of
23 competition. In any event, Arizona halted its move to electric competition.⁵ Further, the type of
24

25 ² EFCA Br. at 3.

26 ³ TEP Br. at 2-3, 7-8.

27 ⁴ EFCA Br. at 21.

⁵ TEP Br. at 2.

1 competition contemplated by the Electric Competition Rules (A.A.C. R14-2-1601 *et seq.*) required
2 the competitors to obtain a CC&N from the Commission⁶, a step that EFCA's members have
3 steadfastly refused to take.⁷

4 EFCA argues that taxi cabs and Uber both compete, even though they have different
5 business models.⁸ But EFCA's principal member, SolarCity was adamant that it does not compete
6 with utilities. As the Commission noted in finding that SolarCity was not a public service
7 corporation⁹:

8 SolarCity argues that the evidence shows that SSA providers do not compete with
9 public service corporations. SolarCity points to APS witness testimony that APS
10 views solar providers, like SolarCity, as partners who are essential for the
11 implementation of the distributed energy requirements of the REST Rules.
12 Furthermore, SolarCity argues, the services that it provides via its SSAs are not
the same services provided by incumbent utilities, and other jurisdictions consider
the solar industry to be complementary to, and not competitive with, public
service corporations.

13 The Commission agreed, noting that "At this point in time, solar providers, like SolarCity, are
14 more a means of helping the incumbents' reach their distributed generation goals than they are
15 competitors. Thus, this factor weighs against finding a need to regulate..."¹⁰ The taxi / Uber
16 analogy does shed some light on the case—EFCA's arguments are similar to those of the taxi
17 industry, attempting to use regulation to keep out Uber. Here, the Commission should allow
18 customers the choice to select the TORS and RCS programs.

19 **3. *The programs are designed to meet ACC compliance requirements.***

20 TEP is pursuing these programs to provide choices to its customers and to meet its
21 Distributed Generation ("DG") obligation imposed by the REST Rules.¹¹ EFCA argues TEP's
22

23 _____
24 ⁶ A.R.S. § 40-207; A.A.C. R14-2-1603.

25 ⁷ See *e.g. SolarCity Corporation*, Decision No. 71795 (July 12, 2010).

26 ⁸ EFCA Br. at 19.

27 ⁹ *SolarCity Corporation*, Decision No. 71795 (July 12, 2010) at 50:10-15.

¹⁰ *SolarCity Corporation*, Decision No. 71795 (July 12, 2010) at 52:13-15.

¹¹ Ex. TEP-2 (Tilghman Rebuttal) at 2-3.

1 motivation to meet its DG obligation is “transparently false”.¹² It is undisputed that DG
2 requirement remains in effect.¹³ While TEP has a waiver for 2016 and 2017¹⁴, TEP must plan to
3 meet its DG obligations in 2018, 2019, 2020, and each year thereafter. TEP cannot assume that
4 waivers will be forthcoming in the future. Relying on waivers is not a sound long-term strategy.
5 Moreover, yearly waivers do not add any new solar capacity to the system; while the TORS and
6 RCS programs (with the definitional waiver) will result in additional solar capacity being installed
7 by TEP, which furthers the purpose of the rule.

8 EFCA cites to Finding of Fact No. 18(C) of Decision No. 75560, which states that there is
9 sufficient solar in TEP’s service territory to meet the DG rule thorough 2020. But this paragraph
10 also states that “TEP does not own title to these REC’s, nor can TEP claim these kWh or REC’s
11 for RPS compliance purposes.”¹⁵ Staff witness Gray confirms that this non-TEP solar cannot be
12 counted towards compliance with the DG rule.¹⁶

13 **4. As a matter of law, the programs are not anticompetitive.**

14 EFCA’s core argument is that TEP has a “desire to monopolize the DG solar segment and
15 that the TORS and RCS proposals reflect an attempt to monopolize that segment.”¹⁷ Tellingly,
16 EFCA fails to apprise the Commission of the law regarding attempted monopolization because, as
17 a matter of law, EFCA cannot come close to meeting any of the elements of such a claim. The
18 United States Supreme Court has made clear that an attempted monopolization claim requires
19 proof of three elements: (1) a “dangerous probability” of monopoly power in the targeted market;
20 (2) a “specific intent” to monopolize that segment, and (3) “predatory or anticompetitive conduct.”
21 *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456-57 (1993). None of these elements are
22 present here.

23 _____
24 ¹² EFCA Br. at 8.

25 ¹³ A.A.C. R14-2-1805.

26 ¹⁴ See Decision No. 75560 (May 13, 2016) at 13:9-12.

27 ¹⁵ Decision No. 75560 (May 13, 2016) at 6:27-28.

¹⁶ Ex. S-2 (Gray Rebuttal) at 3.

¹⁷ EFCA Br. at 3, 18-19.

1 There is patently no dangerous probability of monopolization of solar DG resulting from
2 the TORS and RCS proposals because TEP's TORS (1,000 customers) and RCS (5 MW of
3 capacity) proposals are finite and account for only a small slice of the residential DG solar
4 segment, which has witnessed over 8,400 third-party solar installations totaling 61 MW of
5 capacity in the last three years alone.¹⁸ Market shares of this magnitude are insufficient as a
6 matter of law to establish an attempted monopolization claim. *E.g., Rebel Oil Co., Inc. v. Atlantic*
7 *Richfield Co.*, 51 F.3d 1421, 1438, 1442-43, (9th Cir. 1995) (noting that "most cases hold that a
8 market share of 30 percent is presumptively insufficient" and finding the defendant's 44 percent
9 share would only be sufficient "if entry barriers are high and competitors are unable to expand
10 their output in response to supracompetitive pricing"). The TORS and RCS shares fall well below
11 these thresholds¹⁹, and EFCA's own expert has acknowledged that there are no barriers to entry in
12 the DG solar segment.²⁰ And finally, the Commission controls whether or not TORS and RCS
13 programs can be expanded in the future, and if so can impose whatever conditions it deems
14 necessary to protect effective competition.

15 There are numerous procompetitive reasons supporting TEP's proposals²¹, and EFCA has
16 not offered one speck of evidence that TEP has an "intent" to monopolize the production of solar
17 DG. Nor has EFCA offered evidence that would support an inference of such a specific intent.
18 *Cascade Cabinet Co. v. Western Cabinet & Millwork Inc.*, 710 F.3d 1366, 1373-74 (9th Cir. 1983)
19 ("In the absence of direct evidence of specific intent to monopolize, however, the level of proof
20 required to establish the conduct element increases" and the "plaintiff must introduce evidence of
21 conduct amounting to a substantial claim of restraint of trade or conduct clearly threatening to
22 competition or clearly exclusionary.""). TEP's proposals, as noted above, cannot be expanded

23
24 ¹⁸ Ex. TEP-2 (Tilghman Rebuttal at Ex. CT-R-2).

25 ¹⁹ See TEP Initial Br. at 4-6.

26 ²⁰ Tr. at 501 (DeRamus). Where, as EFCA claims here, the alleged theory of competitive harm involves the
27 "leveraging" of monopoly power in one market to obtain dominance in another (EFCA Br. 11), the relevant
market in which to assess the probability of success is the second market. *Alaska Airlines, Inc. v. United*
Airlines, Inc., 948 F.2d 536, 548 (9th Cir. 1991).

²¹ See TEP Br. at 2-4, 7-13.

1 without Commission approval. Moreover, the RCS program expressly provides for an alternative
2 third-party PPA option. TEP has no intent to eliminate competition. Its intent is to offer customer
3 choice and comply with the REST Rules.

4 The last element also does not exist here, because TEP has not harmed competition by any
5 anticompetitive acts. All TEP has done is advocate proposals to the Commission which the
6 Commission will evaluate on their merits and will accept, reject, or modify. If the Commission
7 accepts or modifies the proposals, it will have found that they are in the public interest and
8 consistent with Commission policy, and there can be no serious argument that TEP's TORS and
9 RCS programs are illegitimate. And if the Commission denies the proposals, they will have no
10 effect on the DG solar segment. In short, there is utterly no merit EFCA's claim of an attempt to
11 monopolize.

12 Tellingly, EFCA did not proffer because it could not offer a single iota of evidence or
13 testimony that the TORS program has slowed or injured the sales of solar DG by EFCA members.
14 There simply is no basis for EFCA's assertion that TEP's proposals are motivated by a desire to
15 eliminate competition.

16 Notably, this is not a situation where a regulated monopoly seeks to sell a product on an
17 unregulated basis in a second market. In such a situation, there may be concerns that because its
18 activities in the second market were unregulated, the regulated entity could evade regulation and
19 affect competition. But here TEP's activities, including the TORS and RCS programs, are fully
20 regulated, including its prices, and thus there is no risk of regulatory evasion. Indeed, EFCA does
21 not and cannot contend that regulatory evasion will occur. *See Western Resources, Inc. v. Surface*
22 *Transp. Bd.*, 109 F.3d 782, 788 (D.C. Cir. 1997) (where vertically integrated railroad was not able
23 to evade rate regulation, there was no harm to competition); *Town of Concord v. Boston Edison*
24 *Co.*, 915 F.2d 17, 19 (1st Cir. 1990) ("Effective price regulation at both the first and second
25 industry levels makes it unlikely that requesting such rates will ordinarily create a serious risk of
26 significant anticompetitive harm.").

1 5. *The TORS and RCS programs are procompetitive programs that make*
2 *economic sense.*

3 EFCA's contention that the TORS and RCS proposals do not make economic sense for
4 TEP other than as a pretext to eliminate competition for DG solar is demonstrably wrong. On the
5 contrary, the record clearly establishes a number of procompetitive justifications for TEP's
6 proposals:

- 7 • It is undisputed that some customers prefer to receive solar DG service from their
8 regulated service provider, and that some prefer the price stability and forward price
9 hedge that the TORS and RCS proposals offer, in lieu of the costs savings-only
10 approach currently embodied in available rooftop solar arrangements.²² Offering
11 consumers greater choice not only is procompetitive, but responding to and satisfying
12 customer preferences is both sensible and important for an electric utility such as TEP.
- 13 • The TORS and RCS programs further the economic interest of TEP's ratepayers
14 because the record establishes that the TORS and RCS programs are projected to cost
15 significantly less than third-party rooftop systems, with TORS costing \$0.30-\$0.65 or
16 12-23% less per watt, and RCS costing \$0.80-\$1.25 or 32-44% less.²³ Indeed, recent
17 financial data for EFCA member SolarCity, which has a nearly 70% market share for
18 DG solar in TEP's service territory, shows that SolarCity's total cost per watt deployed
19 rose to \$3.18 per watt in the first quarter of 2016,²⁴ which would exacerbate this cost
20 gap even further.
- 21 • The TORS and RCS proposals markedly reduce the cost shift associated with DG solar
22 to non-participating customers as compared with existing third-party offerings.²⁵ It is

23 ²² Ex. TEP-2 (Tilghman Rebuttal) at 10:5-12; Ex. TEP-5 (Yardley Rebuttal) at 13:21-25; Tr. at 72:24-73:3
24 (Tilghman); *see also* EFCA Ex. 20 (DeRamus Direct Test.) at 10:25-26 ("TEP's proposal forces customers
25 to choose between lower costs with a competitive offering today vs. long-term rate certainty under TEP's
programs.").

26 ²³ TEP Br. At 11.

27 ²⁴ Sheldon Krieger, *Why Did SolarCity's Costs Increase in 1Q16?*, MARKET REALIST, (May 19, 2016,
12:06 AM), *available at* <http://marketrealist.com/2016/05/solarcitys-costs-increase-1q16/>.

²⁵ TEP Br. 8-10 and n. 29.

1 economically sensible for a regulated utility to propose to comply with its regulatory
2 obligations in a way that reduces the cost burden on its other customers while
3 advancing the Commission's policy directive to promote renewable DG.

- 4 • Though EFCA argues that TEP's proposals do not address customers' peak usage, this
5 claim is incorrect. In contrast to third-party systems that are configured to maximize
6 total annual output without regard to output at peak, TORS systems are designed to
7 peak output in close alignment with TEP's summer peak. This maximizes the value of
8 the output from DG solar to meet system needs at peak load.²⁶
- 9 • And, in addition, these programs help ensure that TEP can meet its DG requirements
10 under Commission rules.

11 In short, TORS and RCS make good economic sense for TEP and its customers because
12 they are procompetitive, add to customer choice, respond to customers' desires and needs, result in
13 cost savings and reduced cost shifting, offer price stability, provide reasonable conservation
14 incentives, will allow TEP to comply with Commission rules, and overall provide more
15 renewables with less impact than under the current rooftop solar offerings.

16 **6. The Commission controls any expansion of these programs.**

17 EFCA's claim that the TORS and RCS programs are a "Trojan Horse" that will inevitably
18 expand to exclude all competitive DG solar offerings is meritless. Both the TORS and RCS
19 proposals at issue here are finite, and make up only a minimal portion of total DG solar in TEP's
20 service territory.²⁷ EFCA misleadingly attempts to bolster TEP's share by attributing to TEP an
21 additional 1,000 homes associated with a possible *third-party owned* PPA for additional RCS

22 _____
23 ²⁶ Ex. TEP-1 (Tilghman Direct) at 10:4-18. EFCA argues that TEP Witness Tilghman acknowledged
24 nothing in the TORS or RCS program "sends any form of price signal related to peak-hour demand and
25 peak-hour usage," EFCA Br. 5. However, as Mr. Yardley explained, "this is an industry-wide issue that is
26 primarily caused by an outdated rate design rather than TEP's TORS program." Ex. TEP-5 (Yardley
27 Rebuttal) at 14:26-15:3.

²⁷ TEP's Application seeks approval to expand TORS to an additional 1,000 homes above the 600 homes
previously approved, and to construct a new 5 MW RCS solar facility. By contrast, during the period from
2013 through the first three months of 2016, there were 8,487 third-party rooftop solar installations in
TEP's service territory totaling approximately 61 MW of DG capacity. TEP Opening Br. 6 n. 22 (citing
Ex. TEP-2 (Tilghman Rebuttal at Ex. CT-R-2)).

1 capacity, and by using an erroneous denominator in its market share calculation.²⁸ Even when
2 EFCA erroneously counts a third party' share as if it were TEP's, however, TEP's proposals are
3 not even close to approaching or threatening a monopoly.

4 To deflect attention from its own members' dominant market share, EFCA notes that Mr.
5 Tilghman indicated TEP might seek to expand the TORS and RCS programs "as warranted by
6 customer demand"²⁹ and hyperbolically asserts that the TORS and RCS programs have "virtually
7 unlimited" potential for expansion.³⁰ But in fact the record establishes that any subsequent
8 expansion of these programs beyond the levels put forward in the instant Application would
9 require TEP to obtain Commission approval. Nor is there any merit to EFCA's assertion that a
10 "kick the can down the road approach" overlooks the "reality" that "if third party solar is
11 effectively eliminated" later regulatory action will not be able to revitalize it.³¹ No danger exists
12 that the modest TORS and RCS programs proposed here will eliminate other forms of DG solar.
13 Rather, the much larger solar rooftop segment has been growing at a record pace. Under
14 Arizona's regulatory paradigm, the Commission is the gatekeeper of any proposed program
15 expansions, and can approve or deny them at the appropriate time while giving all due
16 consideration to the competitive landscape.

17 **7. *It is not anticompetitive to exclude renters from the RCS program.***

18 Next, EFCA complains that renters are not eligible for the RCS program, arguing that this
19 "purposefully exclusionary scope" shows TEP's "true purpose... to monopolize the market
20

21
22 ²⁸ EFCA Br. at 18. By comparing the TORS and RCS proposals only to third-party applications added in
23 the last year and ignoring prior installations, EFCA grossly understates its members' market share.
24 Moreover, even if it were appropriate to focus on 2015 alone, the 75% figure in EFCA's brief is *not* a
25 calculation of TEP's market share, but rather a ratio of the number of TORS/RCS customers to third-party
customers—and as noted above, EFCA attributes 1,000 customers to TEP would not be served by TEP-
owned facilities, but rather under a third-party RCS PPA. Thus, even accepting EFCA's single year
construct, the share of new TEP-served DG customers to total new DG customers would be 2,000 out of
7,000, or 28.5%.

26 ²⁹ EFCA Br. at 16.

27 ³⁰ EFCA Br. at 17.

³¹ EFCA Br. at 19.

1 segment.”³² In other words, having just criticized TEP for trying to serve some customers, EFCA
2 next criticizes TEP for not serving others. TEP does not see how not serving some customers
3 creates a monopoly. TEP has sound reasons to limit the initial phase of the RCS program to
4 homeowners at this time. First, the RCS contract is tied to a specific service point—the home.³³
5 Further, the contract is a long-term contract (10 years).³⁴ In contrast, most residential leases are
6 for one year or less. For similar reasons, businesses are also excluded.³⁵ Further, the RCS is a
7 new program; it makes sense to keep it as similar as possible to the existing successful TORS
8 program. The proposed RCS program terms and rate are based on a long term agreement with the
9 customer to allow TEP to build or contract for community solar capacity to serve that customer.
10 As Company witness Tilghman testified, “we are specifically assigning capacity out of this
11 particular community solar program to that customer and that customer’s premises because it is
12 based specifically on that customer’s consumption at that premises.”³⁶ Different rates, terms and
13 conditions would need to be developed to potentially extend the program to renters. Once there is
14 some experience with the program, the Commission can always consider extending it to renters in
15 a future annual REST plan.

16 In addition, TEP has a separate community solar program—Bright Tucson—which is open
17 to all residential and commercial customers and allows customers to “jump on or off” the program
18 without a long-term commitment because it is not tied to a specific premises or the consumption at
19 that premises.³⁷ The Bright Tucson program was the first community solar program offered by an
20 investor owned utility.³⁸ The Bright Tucson program is in essence a premium rate / green tariff

23 ³² EFCA Br. at 13.

24 ³³ Ex. TEP-1 (Tilghman Direct) at 23.

25 ³⁴ Ex. TEP-1 (Tilghman Direct) at 23.

26 ³⁵ Ex. TEP-1 (Tilghman Direct) at 23.

27 ³⁶ Tr. at 55 (Tilghman).

³⁷ Tr. at 54 (Tilghman).

³⁸ Tr. at 59 (Tilghman).

1 program where the customer selects how much solar they want to sponsor³⁹; it has nothing to do
2 with the customer's usage or their premises. In contrast, the RCS is intended to offer an option
3 similar to the TORS program, with a fixed rate based on the customer's expected consumption. In
4 short, Bright Tucson and RCS are different types of Community Solar programs designed for
5 different purposes, with different rate structures, and which will appeal to different customers.

6 **8. TEP's access to its own information does not harm EFCA's members.**

7 EFCA's assertion that TEP may gain "preferential access to information" such as
8 "customer-specific information as well as network and distribution data" rings particularly
9 hollow.⁴⁰ EFCA members advertise and market their products relentlessly, and EFCA presented
10 no evidence of any specific case or situation where any of its members lost a sale because of lack
11 of information from TEP or uncertainty about the distribution network data.

12 **B. TEP's programs will reduce cost shifts, thereby benefitting customers.**

13 Ironically, EFCA claims that the RCS and TORS programs will "impose unwarranted
14 additional costs on ratepayers" and will "create an actual cost-shift to non-solar ratepayers."⁴¹
15 Solar cost shifts occur, of course, because TEP's current rate design recovers many of its fixed
16 costs through volumetric charges. "Net zero" solar customers with leased rooftop solar do not pay
17 those volumetric charges, thus resulting in unrecovered fixed costs, costs that will ultimately be
18 recovered from non-solar customers unless a different rate design is adopted. The TORS rate, in
19 contrast, is designed to roughly match the customer's previous bill,⁴² resulting in far greater
20 recovery of fixed costs⁴³ (and thus a much smaller cost shift to other customers). For example, the
21 cost shift associated with the TORS program is about \$0.02 per kWh⁴⁴, and the cost shift for the

22
23 ³⁹ Under the Bright Tucson program, customers sign up for "blocks" of solar energy (each block is 150
24 kW) and pay a \$0.02 per kWh premium, with a discount applied to their PP&FAC and REST surcharges. Ex.
25 TEP-1 (Tilghman Direct) at 20.

26 ⁴⁰ EFCA Br. at 11.

27 ⁴¹ EFCA Br. at 1, 3.

⁴² Ex. TEP-1 (Tilghman Direct) at 7.

⁴³ Ex. TEP-1 (Tilghman Direct) at 16-17.

⁴⁴ Ex. TEP-1 (Tilghman Direct) at 9.

1 RCS program is still smaller, as it has a higher rate.⁴⁵ These cost shifts are far smaller than the
2 cost shift created by third party leasing.⁴⁶ Thus, EFCA is in no position to criticize these programs
3 for cost shifts.

4 EFCA argues that TEP has overstated the solar leasing cost shift, relying on Mr. Beach's
5 cost comparisons.⁴⁷ But Mr. Beach's testimony suffers from a host of flaws including:⁴⁸

- 6 • He assumes that utility rates increase at 2.5% per year, which is unrealistically
7 high.
- 8 • He inaccurately assumes that customers will increase consumption by 15%, despite
9 flat to falling overall trends in use per customer, and despite evidence showing
10 solar customers tend to retain similar usage patterns after installing solar.
- 11 • He assumes a 2% annual increase in use per customer (60% over 25 years), despite
12 the trend of falling use per customer over the last ten years.
- 13 • He incorrectly assumes rates will increase every year, rather than every 3 to 5
14 years.
- 15 • Most significantly, he assumes that there is no rate base costs for severing a solar
16 customer, even though that customer remains connected to and dependent on the
17 grid. This assumption contrasts all accepted cost of service methods.

18 Mr. Beach's cost comparisons are deeply flawed and should be disregarded.

19 EFCA also argues that TEP's argument that TORS and RCS will reduce the cost shift is
20 inconsistent with its argument that TORS and RCS are available to a larger pool of customers.⁴⁹
21 However, TEP has not argued that no potential solar leasing customers will select TORS or RCS,
22 only that the pool of potential customers is larger than for solar leasing. Some customers who
23

24 ⁴⁵ Ex. TEP-1 (Tilghman Direct) at 26.

25 ⁴⁶ Ex. TEP-1 (Tilghman Direct) at 15-18, 22, 25; Ex. TEP-4 (Jones Rebuttal) at 2-3.

26 ⁴⁷ EFCA Br. at 6-8.

27 ⁴⁸ Ex. TEP-4 (Jones Rebuttal) at 4; and Ex. TEP-2 (Tilghman Rebuttal) at 8-9.

⁴⁹ EFCA Br. at 7.

1 could have gone with solar leasing will choose TORS or RCS if they are allowed to do so—and
2 the cost shift for those customers will be far smaller than if they had gone with a leasing company.

3 **C. The TORS and RCS rates are reasonable.**

4 EFCA attacks the 15% rate band in the TORS and RCS rates, arguing that there are “no
5 incentives for users to manage their energy requirements within a band” and that the “value
6 proposition is that customers can increase their household energy loads without concern that it will
7 impact their energy bills.”⁵⁰ But additional energy has no value unless the customer has some use
8 for it—will they go out and buy less efficient air conditions and dishwashers just to take
9 advantage? Further, customers have an incentive not to exceed the 115% cap (or they will pay
10 more), and an incentive to lower their use (if they reduce to 85% of prior use, they save).
11 Moreover, by providing a fixed price within the 15% band makes sense given that most costs are
12 fixed costs, which will now be recovered by a fixed price.

13 EFCA argues that with fixed rates “TEP is intentionally disregarding the risks that costs
14 will increase.”⁵¹ But by having some customers on a fixed rate, TEP will have an even greater
15 incentive to keep its fixed costs under control. While TEP has a strong incentive to control fixed
16 costs, there is the possibility that fixed costs will increase over time. This could be viewed as a
17 type of future subsidy to those customers. A small future subsidy is better than the massive
18 current net metering subsidy. Further, any subsidies are naturally limited by the small and strictly
19 regulated size of the TORS and RCS programs.

20 EFCA also argues that fixed rates “make economic sense only because of their manifest
21 ability to destroy competition” and that “no third party could” provide fixed prices.⁵² Plenty of
22 consumer products offers long term fixed prices—think of fixed rate consumer mortgages,
23 annuities, and fixed rate corporate bonds. Closer to home, solar PPAs are typically long term
24 fixed price contracts between the solar developer and the utility. The TORS and RCS rates can be

25
26 ⁵⁰ EFCA Br. at 5.

27 ⁵¹ EFCA Br. at 4.

⁵² EFCA Br. at 5.

1 thought of as micro-PPAs. Like PPAs, they allow TEP to add solar resources, and the rooftop and
2 community solar facilities for these programs will be long term assets, just like PPA projects. A
3 long-term fixed rate is therefore appropriate.

4 As for making “economic sense”, fixed rates for these programs make perfect sense. The
5 TORS and RCS rates are designed to be similar to the customer’s current payment—there is no
6 “discount” like the ones solar leasing companies advertise. Much of the lower rates advertised by
7 the solar lease companies relies on the cost shift—avoiding paying their fair share of the fixed
8 costs embedded in volumetric rates. By avoiding the discount model, the TORS and RCS rates
9 greatly reduce the cost shift problem. But customers still need some economic reason to select the
10 program. The opportunity to “lock in” a fixed rate is that economic rationale for customers,
11 providing them an incentive to participate in the program.

12 **D. The RCS program is community solar.**

13 EFCA argues that RCS is not “true community solar” because it does not meet the
14 “traditional” definition of community solar.⁵³ A relatively new concept like community solar
15 cannot have a “traditional” definition. In any event, one of the earliest sources on community
16 solar, the National Renewable Energy Lab’s *A Guide to Community Solar: Utility, Private and*
17 *Non-Profit Project Development* (November 2010) includes utility owned or operated solar as one
18 of its three models of community solar.⁵⁴ Further, there are a multitude of definitions of
19 “community solar”, many of which are consistent with the utility ownership model.⁵⁵ Moreover,
20 TEP’s Bright Tucson Community Solar program has been accepted as a utility-owned community
21 solar program for years.

22 EFCA also objects to allowing existing projects to be included as community solar under
23 the RCS program. Allowing existing projects to qualify will speed up the availability of the RCS
24

25 ⁵³ EFCA Br. at 14, 15.

26 ⁵⁴ <http://www.nrel.gov/docs/fy11osti/49930.pdf> at pages 6 to 11. See also Ex. TEP-5 (Yardley Rebuttal) at
27 Ex. RCY-3 (quoting definition from this report).

⁵⁵ Ex. TEP-5 (Yardley Rebuttal) at 20.

1 program; otherwise customers would have to wait through the cycle of designing, bidding, and
2 constructing the next project before customers could sign up.

3 **E. Third parties will participate in community solar through PPAs.**

4 EFCA argues that Arizona law does not “preclude” third party participation in community
5 solar.⁵⁶ The RCS program is not limited to TEP-owned projects. The RCS program has always
6 contemplated that some projects will be third-party projects owned by solar developers and
7 contracted with TEP under PPAs.⁵⁷ Any solar developer, including an EFCA member, is free to
8 respond to an Request for Proposals (RFP) for any RCS projects. Thus, EFCA’s assertion that
9 “TEP is expressly requesting a monopoly in community solar”⁵⁸ is false. On the contrary, as
10 stated by Mr. Tilghman: “[T]he Company did not propose to restrict the entire program to
11 Company-owned facilities. The Company has no issue with using a third-party PPA for the
12 facility.”⁵⁹

13 EFCA also appears to argue in favor of third parties directly offering community solar to
14 customers. That would raise numerous questions far beyond the scope of this docket. Unlike
15 solar “leases”, this would seem to be a direct retail sale of power to customers, potentially
16 triggering the requirement to obtain a CC&N, as well as the fair value requirements of the Arizona
17 Constitution.⁶⁰ In addition, how would power get from the community solar facility to the
18 customer? Retail wheeling, “sleeving” and virtual net metering are all currently not permitted in
19 Arizona and are complex topics that would require study before implementation. In short, such a
20 proposal would raise a number of complex and likely controversial issues that have not been
21 developed in this docket.

22 ⁵⁶ EFCA Br. at 21-22.

23 ⁵⁷ Ex. TEP-1 (Tilghman Direct) at Ex. A (2016 REST Plan) at Ex. 8, Rider 17 – Residential Community
24 Solar Tariff, Original Sheet 717.

25 ⁵⁸ EFCA Br. at 12.

26 ⁵⁹ See Ex. TEP-2 (Tilghman Rebuttal) at 16:1-6. Staff Witness Gray acknowledged that TEP’s RCS
27 proposal *does* allow for third-party competition via the use of a PPA (Tr. at 616:12-617:7) and Staff has
taken the position that Rider-17’s provision for third-party participation under a PPA should “alleviate
EFCA’s concerns about the RCS program being anticompetitive and monopolistic.” Staff Opening Br. 11.

⁶⁰ Article 15, Section 14.

1 **F. TEP reasonably complied with the previous TORS order.**

2 EFCA contends that TEP “ignored... requirements” of the order that approved the TORS
3 program, Decision No. 74884, by not creating a separate advisory committee.⁶¹ Creating a
4 separate committee would unnecessarily duplicate the work of APS’s advisory committee. Thus,
5 Staff has recommended that this requirement be modified to allow TEP to participate in the APS
6 committee, subject to certain requirements including providing its own reports.⁶² TEP agrees.

7 **III. Reply to RUCO.**

8 RUCO generally supports the TORS program and recommends that the Commission
9 approve it. RUCO includes a requirement that if the TORS program cost is greater than the solar
10 leasing cost shift, any such overage should not be recoverable.⁶³ TEP believes that this concept,
11 while well intentioned, adds unnecessary complexity to the program. Any “overage” is highly
12 unlikely under any reasonable calculation of the cost shift. Further, the TORS program already
13 contains a “cost parity” provision.⁶⁴

14 RUCO supports the RCS concept, but believes that TEP’s program does not go far
15 enough.⁶⁵ For example, RUCO believes that renters should be eligible for the program. Part
16 II.A.7 of this brief explains why TEP is limiting the program to homeowners at this time. RUCO
17 also suggests that RCS customers be allowed to make up front payments. Under that proposal,
18 “[i]n essence, the customer replaces the traditional utility debt lender.”⁶⁶ While this proposal is
19 interesting, it is not fully developed, and raises a number of questions:

- 20 • Is such a payment accounted for as a contribution, an advance or as a loan?
21 • What is the interest rate, if any?

22
23
24 ⁶¹ EFCA Br. at 16.

25 ⁶² Ex. S-1 (Gray Direct) at 8-11.

26 ⁶³ RUCO Br. at 3.

27 ⁶⁴ Decision No. 74884 (Dec. 31, 2014) at page 20, Finding of Fact No. 73

⁶⁵ RUCO Br. at 3.

⁶⁶ RUCO Br. at 4.

- The securities law and banking law implications of the proposal must be examined as well, especially if the payment is treated as a loan.

Further, to the extent customers are willing to pay up front capital costs, a much simpler alternative exists—buying or leasing their own rooftop solar system.

IV. Reply to Staff.

Staff recommends that the expansion of the TORS program be denied. Staff argues that TEP should provide the TORS pilot project report first. The report will be compiled after the 600 customer pilot is completed. However, if the TORS program is not extended, the program would start, stop, and then potentially start again after the report is evaluated. This is not efficient and could raise costs. In addition, there is strong unmet customer demand for the TORS program. Thus TEP recommends that the 1,000 customer extension be approved, and the full report be considered in TEP's next annual REST proceeding, at which time the TORS program can be reevaluated.

Staff also argues that there are less costly options to TORS, such as waivers or up front incentives to buy RECs. But as noted in TEP's Initial Brief, waivers are uncertain, there is no market for RECs, and the Commission does not favor up front incentives.⁶⁷

Staff recommends the RCS program be approved with modifications. TEP believes that the modifications are not needed. Staff proposes that the RCS program be limited to new facilities—existing facilities would not be eligible. As explained in response to EFCA's similar argument, this would unnecessarily delay the program. Staff also proposes that the program be modified to allow for third party PPAs. As noted in response to EFCA, the RCS program already contemplates third party PPAs. Staff proposes that the 15% band be replaced with a rate that is adjusted annually. This could be confusing to customers; it is hard to explain a fixed rate that can change each year. As explained in response to EFCA, the fixed rate is a key component to the plan that provides the economic motivation for customers to sign up without a discount. Lastly, Staff requests additional information on the cost of service and the derivation of the \$17.50 RCS

⁶⁷ TEP Br. at 14-15.

1 rate. TEP notes that these topics can be explored in the rate case, where discovery is well
2 underway.

3 **V. Conclusion.**

4 The TORS and RCS programs will provide additional choices to TEPs customers, will
5 expand the deployment of distributed solar generation, and will enable TEP to meet its obligations
6 under this Commission's DG rules and is in the public interest. The Commission should approve
7 both programs as requested in TEP's Application, testimony, and Initial Brief. Additionally, the
8 Commission should approve a permanent waiver of the definition of "DG" to allow community
9 solar, including RCS, to qualify as DG, recognizing that community solar is a distributed resource
10 as described in TEP's, Staff's and RUCO's Initial Briefs.

11
12 RESPECTFULLY SUBMITTED this 24th day of June, 2016.

13 Tucson Electric Power Company

14
15 By 

16 Michael W. Patten

17 Timothy J. Sabo

18 Jason D. Gellman

19 Snell & Wilmer L.L.P.

20 One Arizona Center

21 400 East Van Buren Street

22 Phoenix, Arizona 85004

23 and

24 Bradley S. Carroll

25 Tucson Electric Power Company

26 88 East Broadway, MS HQE910

27 P.O. Box 711

Tucson, Arizona 85702

Attorneys for Tucson Electric Power Company

1 Original and 13 copies of the foregoing
filed this 24th day of June 2016, with:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, Arizona 85007

5 Copies of the foregoing hand-delivered/mailed/e-mailed
this 24th day of June, 2016, to:

6 Jane Rodda,
7 Administrative Law Judge
Hearing Division
8 Arizona Corporation Commission
400 West Congress
9 Tucson, Arizona 85701

10 Robin Mitchell
Wes Van Cleve
11 Brian E. Smith
Legal Division
12 Arizona Corporation Commission
1200 West Washington Street
13 Phoenix, Arizona 85007

14 Thomas Broderick, Director
Utilities Division
15 Arizona Corporation Commission
1200 West Washington Street
16 Phoenix, Arizona 85007

17 Daniel W. Pozefsky, Chief Counsel
RUCO
18 1110 West Washington, Suite 220
Phoenix, Arizona 85007

19 Barbara LaWall, Pima County Attorney
20 Charles Wesselhoft, Deputy County Attorney
Pima County Attorneys' Office
21 32 North Stone Ave., Suite 2100
Tucson, Arizona 85701
22 Charles.Wesselhoft@pcao.pima.gov

Consented To Service By Email

23 C. Webb Crockett
24 Patrick Black
Fennemore Craig, PC
25 2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016
26 wcrockett@fclaw.com
pblack@fclaw.com

27 **Consented To Service By Email**

1 Kevin Higgins
2 Energy Strategies, LLC
215 South State Street, Suite 200
3 Salt Lake City, Utah 84111

4 Nicholas J. Enoch
Jarrett J. Haskovec
5 Emily A. Tornabene
Lubin & Enoch, PC
6 349 North Fourth Avenue
Phoenix, Arizona 85003

7 Lawrence V. Robertson, Jr.
8 P.O. Box 1448
Tubac, Arizona 85646

9 Meghan H. Grabel
10 Osborn Maladon, PA
2929 North Central Avenue
11 Phoenix, Arizona 85012
mgrabel@omlaw.com

12 **Consented To Service By Email**

13 Gary Yaquinto, President & CEO
Arizona Investment Council
14 2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004
15 gyaquinto@arizonaaic.org

16 **Consented To Service By Email**

17 Timothy M. Hogan
Arizona Center for Law in the Public Interest
202 E. McDowell Road, Suite 153
18 Phoenix, Arizona 85004
thogan@aclpi.org

19 **Consented To Service By Email**

20 Rick Gilliam
Director of Research and Analysis
21 The Vote Solar Initiative
1120 Pearl Street, Suite 200
22 Boulder, Colorado 80302
rick@votesolar.org

23 **Consented To Service By Email**

24 Briana Kobor, Program Director
Vote Solar
25 360 22nd Street, Suite 730
Oakland, CA 94612
26 briana@votesolar.org

27 **Consented To Service By Email**

1 Michael Alan Hiatt
2 Katie Dittelberger
3 Earthjustice
4 633 17th Street, Suite 1600
5 Denver, Colorado 80202
6 mhiatt@earthjustice.org
7 kdittleberger@earthjustice.org
8 **Consented To Service By Email**

9 Craig A. Marks
10 Craig A. Marks, PLC
11 10645 N. Tatum Blvd., Suite 200-676
12 Phoenix, Arizona 85028
13 craig.marks@azbar.org
14 **Consented To Service By Email**

15 Pat Quinn
16 President and Managing Partner
17 Arizona Utility Ratepayer Alliance
18 5521 E. Cholla Street
19 Scottsdale, Arizona 85254

20 Kurt J. Boehm
21 Jody Kyler Cohn
22 Boehm, Kurtz & Lowry
23 36 E. Seventh Street, Suite 1510
24 Cincinnati, OH 45202

25 The Kroger Co.
26 Attn: Corporate Energy Manager (G09)
27 1014 Vine Street
Cincinnati, OH 45202

18 Stephen J. Baron
19 J. Kennedy & Associates
20 570 Colonial Park Dr., Suite 305
21 Roswell, GA 30075

22 Travis Ritchie
23 Sierra Club Environmental Law Program
24 2101 Webster Street, Suite 1300
25 Oakland, California 94612
26 Travis.ritchie@sierraclub.org
27 **Consented To Service By Email**

24 Court S. Rich
25 Rose Law Group pc
26 7144 E. Stetson Dr., Suite 300
27 Scottsdale, AZ 85251
crich@roselawgroup.com
Consented To Service By Email

1 Jeffrey Shinder
2 Constantine Cannon LLP
3 335 Madison Avenue, 9th Floor
New York, NY 10017

4 Richard O. Levine
5 Constantine Cannon LLP
6 1001 Pennsylvania Ave, NW
Suite 1300 North
Washington, DC 20004

7 Thomas A. Loquvam
8 Pinnacle West Capital Corporation
9 P.O. Box 53999, MS 8695
Phoenix, AZ 85072
10 thomas.loquvam@pinnaclewest.com
Consented To Service By Email

11 Kerri A. Carnes
12 Arizona Public Service Company
13 P.O. Box 53072, MS 9712
Phoenix, AZ 85072-3999
Kerri.Carnes@aps.com
Consented To Service By Email

14 Tom Harris, Chairman
15 Arizona Solar Energy Industries Association
2122 W. Lone Cactus Dr., Suite 2
Phoenix, AZ 85027
16 Tom.harris@ariseia.org
Consented To Service By Email

17 Scott Wakefield
18 Hienton & Curry, PLLC
5045 N 12th Street, Suite 110
19 Phoenix, Arizona 85014-3302

20 Steve Chriss
21 Wal-Mart Stores, Inc.
2011 S.E. 10th Street
22 Bentonville, Arkansas 72716

23 Ken Wilson
24 Western Resource Advocates
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

25 Jeff Schlegel
26 SWEEP Arizona Representative
1167 W. Samalayuca Dr.
27 Tucson, Arizona 85704-3224

1 Ellen Zuckerman
SWEEP Senior Associate
4231 E. Catalina Dr.
2 Phoenix, Arizona 85018

3 Cynthia Zwick
Arizona Community Action Association
4 2700 North 3rd Street, Suite 3040
Phoenix, Arizona 85004

5 Kevin Hengehold
6 Arizona Community Action Association
2700 N 3rd St., Suite 3040
7 Phoenix, Arizona 85004

8 Bryan Lovitt
3301 West Cinnamon Drive
9 Tucson, Arizona 85741

10 Kevin M. Koch
P.O. Box 42103
11 Tucson, Arizona 85733

12 Karen White
139 Barnes Drive
13 Suite 1
Tyndall Air Force Base, Florida 32401
14 karen.white.13@us.af.mil
Consented To Service By Email

15 Kyle J. Smith
16 9275 Gunston Road (JALS RL/IP)
Suite 1300
17 Fort Belvoir, Virginia 22060
kyle.j.smith124.civ@mail.mil
18 **Consented To Service By Email**

19 Jeffrey W. Crockett
Crockett Law Group PLLC
20 2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016

21 Bruce Plenk
22 2958 N. St. Augustine Place
Tucson, Arizona 85712

23 Garry D. Hays
24 Law Offices of Garry D. Hays, PC
2198 E. Camelback Road, Suite 305
25 Phoenix, Arizona 85016

26 Greg Patterson
Munger Chadwick
27 916 West Adams, Suite 3
Phoenix, Arizona 85007

1 Camila Alarcon
2 Gammage & Burnham, PLC
3 Two N. Central Ave., 15th Floor
4 Phoenix, Arizona 85004

5 Michele L. Van Quathem
6 Law Office of Michele Van Quathem, PLLC
7 7600 N. 15th St., Suite 150-30
8 Phoenix, Arizona 85020

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
By Jacklyn Howard